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Via E-Filing & Hand Delivery

August 15, 2008

The Hon. Phyllis J. Hamilton
United States District Court
Northern District of California
450 Golden Gate
San Francisco, CA 94102

Re: *Salinas v. Amteck, et al.*, USDC Case No. 3:08-cv-01463 PJH

Dear Judge Hamilton:

Our office represents U.S. Trades, LLC in the above-referenced matter. On August 11, 2008, plaintiffs filed their dismissal of U.S. Trades, LLC. The dismissal as currently filed states that it is a dismissal without prejudice. I asked plaintiffs' counsel (by the letter herein enclosed) to clarify to the Court that the dismissal is with prejudice, pursuant to Federal Rule of Civil Procedure section 41(B), which states:

Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal-or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

FRCP § 41(B) (*Emphasis supplied*).

Since plaintiffs previously dismissed the state court action they filed in Napa, California, based on the same claim, plaintiffs' dismissal of U.S. Trades, LLC operates as an adjudication on the merits. I hereby respectfully advise the Court that plaintiffs' dismissal of U.S. Trades, LLC is with prejudice.

Sincerely,

CALLAHAN, McCUNE & WILLIS, APLC


Anna C. Gehrig, Esq.

Enclosure

cc: All Counsel (via e-serve)

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Via Facsimile

August 11, 2008

Wesley T. Ball, Esq.
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1010 Lamar, Suite 1600
Houston, TX 77002
Fax: (713) 221-8301

Re: *Salinas v. Amteck, et al.*

Dear Mr. Ball:

Thank you for speaking with me this morning. And thank you for filing your plaintiffs' dismissal of U.S. Trades, LLC. The dismissal as currently filed says it is without prejudice. However, Federal Rule of Civil Procedure section 41(B) states:

Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal-or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.
FRCP § 41(B) (*Emphasis supplied*).

Since plaintiffs previously dismissed the state court action they filed based on the same claim in Napa, California, plaintiffs' dismissal of U.S. Trades, LLC operates as an adjudication on the merits. Accordingly, please clarify to the Court that plaintiffs' dismissal of U.S. Trades, LLC is with prejudice pursuant to Federal Rule of Civil Procedure section 41(B).

Thank you for your professional courtesy.

Sincerely,

CALLAHAN, McCUNE & WILLIS, APLC


Anna C. Gehrig, Esq.

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